

ORIGINAL

C-11096  
09/13/2016

**LINKING AGREEMENT  
BETWEEN  
THE CITY OF GLENDALE, ARIZONA  
AND  
CALMAT CO. DBA VULCAN MATERIALS COMPANY**

THIS LINKING AGREEMENT (this "Agreement") is entered into as of this *13* day of *September* 2016, between the City of Glendale, an Arizona municipal corporation (the "City"), and Calmat Co. a Delaware company authorized to do business in Arizona dba Vulcan Materials Company ("Contractor"), collectively, the "Parties."

**RECITALS**

- A. On June 1, 2016, under the S.A.V.E. Cooperative Purchasing Agreement, the City of Peoria entered into a contract with Contractor to purchase the goods and services described in the Road Materials Agreement, Agreement No. ACON24016 ("Cooperative Purchasing Agreement"), which is attached hereto as Exhibit A. The Cooperative Purchasing Agreement permits its cooperative use by other governmental agencies including the City.
- B. Section 2-149 of the City's Procurement Code permits the Materials Manager to procure goods and services by participating with other governmental units in cooperative purchasing agreements when the best interests of the City would be served.
- C. Section 2-149 also provides that the Materials Manager may enter into such cooperative agreements without meeting the formal or informal solicitation and bid requirements of Glendale City Code Sections 2-145 and 2-146.
- D. The City desires to contract with Contractor for supplies or services identical, or nearly identical, to the supplies or services Contractor is providing other units of government under the Cooperative Purchasing Agreement. Contractor consents to the City's utilization of the Cooperative Purchasing Agreement as the basis of this Agreement, and Contractor desires to enter into this Agreement to provide the supplies and services set forth in this Agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated by reference, and the covenants and promises contained in this Linking Agreement, the parties agree as follows:

- 1. **Term of Agreement.** The City is purchasing the supplies and/or services from Contractor pursuant to the Cooperative Purchasing Agreement. According to the Cooperative Purchasing Agreement purchases can be made by governmental entities from the date of award, which was June 1, 2016, until the date the contract expires on May 31, 2017, unless the term of the Cooperative Purchasing Agreement is extended by the mutual agreement of the original contracting parties. The Cooperative Purchasing Agreement, however, may not be extended beyond May 31, 2021. The initial period of this Agreement, therefore, is the period from the Effective Date of this Agreement until May 31, 2017. The City Manager or

designee, however, may renew the term of this Agreement for (4) one-year periods until the Cooperative Purchasing Agreement expires on May 31, 2021. Renewals are not automatic and shall only occur if the City gives the Contractor notice of its intent to renew. The City may give the Contractor notice of its intent to renew this Agreement 30 days prior to the anniversary of the Effective Date to effectuate such renewal.

2. Scope of Work; Terms, Conditions, and Specifications.

- A. Contractor shall provide City the supplies and/or services identified in the Scope of Work attached as Exhibit B.
- B. Contractor agrees to comply with all the terms, conditions and specifications of the Cooperative Purchasing Agreement. Such terms, conditions and specifications are specifically incorporated into and are an enforceable part of this Agreement.

3. Compensation.

- A. City shall pay Contractor compensation at the same rate and on the same schedule as provided in the Cooperative Purchasing Agreement, which is attached hereto as Exhibit C.
  - B. The total purchase price for the supplies and/or services purchased under this Agreement shall not exceed one hundred thousand dollars (\$100,000) annually or five hundred thousand dollars (\$500,000) for the entire term of the Agreement (initial term plus any renewals).

4. Cancellation. This Agreement may be cancelled pursuant to A.R.S. § 38-511.

5. Non-discrimination. Contractor must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section. Contractor, and on behalf of any subcontractors, warrants compliance with this section.

6. Insurance Certificate. A certificate of insurance applying to this Agreement must be provided to the City prior to the Effective Date.

7. E-verify. Contractor complies with A.R.S. § 23-214 and agrees to comply with the requirements of A.R.S. § 41-4401.

8. **Notices.** Any notices that must be provided under this Agreement shall be sent to the Parties' respective authorized representatives at the address listed below:

City of Glendale  
c/o Anthony Weathersby  
7070 W Northern Ave  
Glendale, Arizona 85303  
623-930-4108

and

Vulcan Materials Company  
c/o Patti Southway  
2526 E University  
Phoenix, AZ 85034

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year set forth above.

"City"

"Contractor"

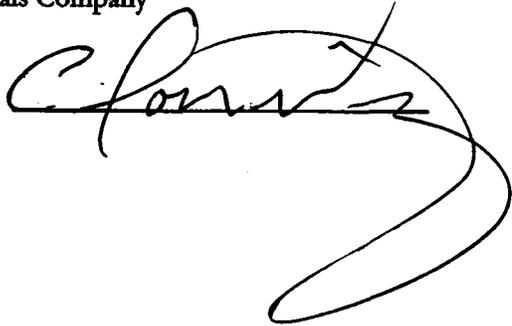
City of Glendale, an Arizona  
municipal corporation

Calmat Co., a Delaware company dba Vulcan  
Materials Company

By:

  
\_\_\_\_\_  
Kevin R. Phelps  
City Manager

By:

  
\_\_\_\_\_  
Name:  
Title:

ATTEST:

  
\_\_\_\_\_  
Julie K. Bower (SEAL)  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Michael D. Bailey  
City Attorney

**LINKING AGREEMENT  
BETWEEN  
THE CITY OF GLENDALE, ARIZONA  
AND  
CALMAT CO. DBA VULCAN MATERIALS COMPANY**

**EXHIBIT A**

City of Peoria Agreement No. ACON24016 - Road Materials Agreement



# City of Peoria, Arizona

## Notice of Invitation for Bid



Invitation for Bid No: **P16-0061 (B)**

Bid Due Date: **May 26, 2016**

Materials and/or Services: **Road Materials**

Bid Due Time: **2:00 P.M. AZ Time**

Mailing Address: **City of Peoria, Materials Management  
9875 N. 85<sup>th</sup> Avenue, 2<sup>nd</sup> Floor  
Peoria, AZ 85345**

Contact: **Christine Finney**

Phone: **(623) 773-7115**

In accordance with City of Peoria Procurement Code competitive sealed bids for the material or services specified will be received by the City of Peoria Materials Management at the specified location until the date and time cited above. Bids received by the correct date and time shall be publicly opened and the bid price read. Bids shall be in the actual possession of the City of Peoria Materials Management on or prior to the exact date and time indicated above. Late bids will not be considered, except as provided in the City of Peoria Procurement Code. *Bids shall be submitted in a sealed envelope with the Invitation for Bid number and the bidder's name and address clearly indicated on the front of the envelope.* All bids shall be completed in ink or typewritten. Bidders are strongly encouraged to carefully read the entire Invitation for Bid Package.

### OFFER

To the City of Peoria: The undersigned hereby offers and agrees to furnish materials and/or services in compliance with all terms, conditions, specifications and amendments in the Notice of Invitation for Bid except for any written exceptions in the offer. The signature below also certifies his or her understanding and compliance with paragraph one of The City of Peoria Standard Terms and Conditions (COP Form 202).

For clarification of this offer contact:

Telephone: 602-803-9828 Fax 528-8979

Name: Patti Southwark

Email: southwark@vulcanmail.com

LALMART Co. dba VULCAN MATERIALS

[Signature]

Company Name

Authorized Signature for Offer

2526 E. UNIVERSITY

DOMINICK MARTINEZ

Address

Printed Name

PHOENIX  
City

AZ. 85034  
State Zip

DISTRICT SALES MANAGER  
Title

### ACCEPTANCE OF OFFER AND CONTRACT AWARD (For City of Peoria Use Only)

Your offer is hereby accepted. The Contractor is now bound to sell the materials and/or services listed by the attached award notice based upon the solicitation, including all terms conditions, specifications, amendments, etc., and the Contractor's offer as accepted by the City. The Contractor is hereby cautioned not to commence any billable work or provide any material, service or construction under this contract until Contractor receives an executed *Purchase Order*.

Attested by:

City of Peoria, Arizona

Effective Date: 6-1-2016

[Signature]  
Rhonda Geriminsky, City Clerk

Approved as to form:

[Signature]  
City Attorney

CC:

ACON 24016  
Contract Number

Contract Awarded Date: June 1, 2016



Copyright 2003 City of Peoria, Arizona

[Signature]  
Official File

[Signature]  
Dan Zenko, Materials Manager

A C O N 2 4 0 1 6 .



# City of Peoria, Arizona

## Notice of Invitation for Bid



### 1. PREPARATION OF BID:

- a. All bids shall be submitted on the forms provided in this *Invitation to Bid* package. It is permissible to copy these forms if required. Telegraphic (facsimile), electronic or mailgram bids will not be considered.
- b. The Offer and Contract Award document shall be submitted with an original ink signature by a person authorized to sign the offer.
- c. Erasures, interlineations, or other modifications in the bid shall be initialed in original ink by the authorized person signing the Offer.
- d. If price is a consideration and in case of error in the extension of prices in the bid, the unit price shall govern. No bid shall be altered, amended, or withdrawn after the specified bid due date and time.
- e. Periods of time, stated as a number of days, shall be calendar days.
- f. Bid due date and time is stated as local Arizona time.
- g. It is the responsibility of all Offerors to examine the entire *Invitation For Bid* package and seek clarification of any item or requirement that may not be clear and to check all responses for accuracy before submitting a bid. Negligence in preparing a Bid confers no right of withdrawal after bid due date and time.

2. **INQUIRIES:** Any question related to the *Invitation For Bid* shall be directed to the Buyer whose name appears as the contact on the IFB. The Offeror shall not contact or ask questions of the department for which the requirement is being procured. Questions should be submitted in writing when time permits. The Buyer may require any and all questions be submitted in writing at the Buyer's sole discretion. Any correspondence related to an *Invitation For Bid* should refer to the appropriate *Invitation For Bid* number, page, and paragraph number. Offeror shall identify the envelope as containing questions since such an envelope may be identified as a sealed bid and may not be opened until after the official *Invitation For Bid* due date and time.

3. **PROSPECTIVE OFFERORS CONFERENCE:** A prospective offerors conference may be held. If scheduled, the date and time of this conference will be indicated on the cover page of this document. The purpose of this conference will be to clarify the contents of this *Invitation For Bid* in order to prevent any misunderstanding of the City's position. Any doubt as to the requirements of this *Invitation For Bid* or any apparent omission or discrepancy should be presented to the City at this conference. The City will then determine if any action is necessary and may issue a written amendment to the *Invitation For Bid*. Oral statements or instructions will not constitute an amendment to this *Invitation For Bid*.

4. **LATE BIDS:** Late Bids will not be considered, except as provided by the City of Peoria Procurement Code. A vendor submitting a late bid shall be so notified.

5. **WITHDRAWAL OF BID:** At any time prior to the specified bid due date and time, a Vendor (or designated representative) may withdraw the bid.

6. **AMENDMENT OF BID:** Receipt of a Solicitation Amendment shall be acknowledged by signing and returning the document with the offer at the specified bid due date and time.

7. **PAYMENT:** The City will make every effort to process payment for the purchase of construction services within fourteen (14) calendar days after an approved pay request is received with a correct notice of amount due, unless a good faith dispute exists as to any obligation to pay all or a portion of the account.

8. **VENDOR REGISTRATION:** After the award of a contract, the successful Vendor shall complete a Vendor Registration Application and submit it to the City of Peoria Materials Management Division.

### 9. AWARD OF CONTRACT:

- a. Unless the Offeror states otherwise, or unless provided within this *Invitation For Bid*, the City reserves the right to award by individual line item, by group of line items, or as a total, whichever is determined by the Materials Manager to be most advantageous to the City.
- b. Notwithstanding any other provision of this *Invitation For Bid*, The City expressly reserves the right to:
  - i. Waive any immaterial defect or informality; or
  - ii. Reject any or all bids, or portions thereof, or
  - iii. Reissue a *Invitation For Bid*.
- c. A response to a *Invitation For Bid* is an offer to contract with the City based upon the terms, conditions and specifications contained in the City's *Invitation For Bid* and the written amendments thereto, if any. Bids do not become contracts unless and until they are accepted and executed by the City Council or Materials Manager. A contract is formed when written notice of award(s) is provided to the successful Offeror(s). The contract has its inception in the award document, eliminating a formal signing of a separate contract. For that reason, all of the terms and conditions of the procurement contract are contained in the *Invitation For Bid*; unless modified by an Amendment.



## STANDARD TERMS AND CONDITIONS

Materials Management  
Procurement  
9875 N. 85<sup>th</sup> Ave., 2<sup>nd</sup> Fl.  
Peoria, Arizona 85345-6560  
Phone: (623) 773-7115  
Fax: (623) 773-7118

**THE FOLLOWING TERMS AND CONDITIONS ARE AN EXPLICIT PART OF THE SOLICITATION AND ANY RESULTANT CONTRACT.**

1. **CERTIFICATION:** By signature in the Offer section of the Offer and Contract Award page the Contractor certifies:
  - a. The submission of the offer did not involve collusion or other anti-competitive practices.
  - b. The Contractor shall not discriminate against any employee or applicant for employment.
  - c. The Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip favor, or service to a public servant in connection with the submitted offer. Failure to sign the offer, or signing it with a false statement, shall void the submitted offer or any resulting contracts, and the vendor may be debarred.
2. **BRIBES AND KICK-BACKS:** The General Contractor shall not by any means:
  - a. Induce any person or entity employed in the construction of the Project to give up any part of the compensation to which that person or entity is entitled;
  - b. Confer on any governmental, public or quasi-public official having any authority or influence over the Project, any payment, loan subscription, advance, deposit of money, services or anything of value, present or promised;
  - c. Offer nor accept any bribes or kick-backs in connection with the Project from or to any individual or entity, including any of its trade contractors, subcontractors, consultants, suppliers or manufacturers of Project goods and materials; or,
  - d. Without the express written permission of the Owner, call for or by exclusion require or recommend the use of any subcontractor, consultant, product, material, equipment, system, process or procedure in which the General Contractor has a direct or indirect proprietary or other pecuniary interest.
3. **APPLICABLE LAW:** In the performance of this agreement, contractors shall abide by and conform to any and all laws of the United States, State of Arizona and City of Peoria including but not limited to federal and state executive orders providing for equal employment and procurement opportunities, the Federal Occupational Safety and Health Act and any other federal or state laws applicable to this agreement.

Contractor specifically understands and acknowledges the applicability to it of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986, and the Drug Free Workplace Act of 1989. In addition, if this agreement pertains to construction, Contractor must also comply with A.R.S. § 34-301, as amended (Employment of Aliens on Public Works Prohibited) and A.R.S. § 34-302, as amended (Residence Requirements for Employees).

Under the provisions of A.R.S. § 41-4401, Contractor hereby warrants to the City that Contractor and each of its subcontractors ("Subcontractors") will comply with, and are contractually obligated to comply with, all Federal immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter, "Contractor Immigration Warranty").

A breach of the Contractor Immigration Warranty shall constitute a material breach of this agreement and shall subject Contractor to penalties up to and including termination of this agreement at the sole discretion of the City. The City may, at its sole discretion, conduct random verification of the employment records of Contractor and any Subcontractors to ensure compliance with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any random verifications performed.

Neither Contractor nor any Subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if Contractor or the Subcontractor establishes that it has complied with the employment verification provisions prescribed by §§ 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214(A).

The provisions of this Paragraph must be included in any contract Contractor enters into with any Subcontractors who provide services under this agreement or any subcontract. "Services" is defined as furnishing labor, time or effort in the



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State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

Contractor warrants, for the term of this agreement and for six months thereafter, that it has fully complied with the requirements of the Immigration Reform and Control Act of 1986 and all related or similar legal authorities.

This contract shall be governed by the City and Contractor shall have all remedies afforded each by the Uniform Commercial Code, as adopted in the State of Arizona, except as otherwise provided in this contract or in statutes pertaining specifically to the City. This contract shall be governed by the laws of the State of Arizona and suit pertaining to this contract may be brought only in courts in the State of Arizona.

This contract is subject to the provisions of ARS §38-511; the City may cancel this contract without penalty or further obligations by the City or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City or any of its departments or agencies, is at any time while the contract or any extension of the contract is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

4. **LEGAL REMEDIES:** All claims and controversies shall be subject to resolution according to the terms of the City of Peoria Procurement Code.
5. **CONTRACT:** The contract between the City and the Contractor shall consist of (1) the Solicitation, including instructions, all terms and conditions, specifications, scopes of work, attachments, price sheet(s) and any amendments thereto, and (2) the offer submitted by the Contractor in response to the solicitation. In the event of a conflict in language between the Solicitation and the Offer, the provisions and requirements in the Solicitation shall govern. However, the City reserves the right to clarify, in writing, any contractual terms with the concurrence of the Contractor, and such written contract shall govern in case of conflict with the applicable requirements stated in the Solicitation or the Vendor's offer. The Solicitation shall govern in all other matters not affected by the written contract.
6. **CONTRACT AMENDMENTS:** This contract may be modified only by a written Contract Amendment signed by persons duly authorized to enter into contracts on behalf of the City and the Contractor.
7. **CONTRACT APPLICABILITY:** The Offeror shall substantially conform to the terms, conditions, specifications and other requirements found within the text of this Solicitation. All previous agreements, contracts, or other documents, which have been executed between the Offeror and the City are not applicable to this Solicitation or any resultant contract.
8. **PROVISIONS REQUIRED BY LAW:** Each and every provision of law and any clause required by law to be in the contract will be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the contract will forthwith be physically amended to make such insertion or correction.
9. **SEVERABILITY:** The provisions of this contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the contract which may remain in effect without the invalid provision or application.
10. **RELATIONSHIP TO PARTIES:** It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Contractor is advised that taxes or Social Security payments will not be withheld from any City payments issued hereunder and that the Contractor should make arrangements to directly pay such expenses, if any.
11. **INTERPRETATION-PAROL EVIDENCE:** This contract represents the entire agreement of the Parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this contract are hereby revoked and superseded by this contract. No representations, warranties, inducements or oral agreements have been made by any of the Parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this contract. This contract may not be changed, modified or rescinded except as



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provided for herein, absent a written agreement signed by both Parties. Any attempt at oral modification of this contract shall be void and of no effect.

12. **NO DELEGATION OR ASSIGNMENT:** Contractor shall not delegate any duty under this Contract, and no right or interest in this Contract shall be assigned by Contractor to any successor entity or third party, including but not limited to an affiliated successor or purchaser of Contractor or its assets, without prior written permission of the City. The City, at its option, may cancel this Contract in the event Contractor undertakes a delegation or assignment without first obtaining the City's written approval. Contractor agrees and acknowledges that it would not be unreasonable for the City to decline to approve a delegation or assignment that results in a material change to the services provided under this Contract or an increased cost to the City.
13. **SUBCONTRACTOR / SUPPLIER CONTRACTS:** The Contractor shall enter into written contracts with its subcontractor(s) and supplier(s), if any, and those written contracts shall be consistent with this Contract for Construction. It is the intent of the Owner and the Contractor that the obligations of the Contractor's subcontractor(s) and supplier(s), if any, inure to the benefit of the Owner and the Contractor, and that the Owner be a third-party beneficiary of the Contractor's agreements with its subcontractor(s) and supplier(s).
- The Contractor shall make available to each subcontractor and supplier, if any, prior to the execution of written contracts with any of them, a copy of the pertinent portions of this Contract for Construction, including those portions of the Construction documents to which the subcontractor or supplier will be bound, and shall require that each subcontractor and supplier shall similarly make copies of applicable parts of such documents available to its respective subcontractor(s) and supplier(s).
  - The Contractor shall engage each of its subcontractor(s) and supplier(s) with written contracts which preserve and protect the rights of the Owner and include the acknowledgment and agreement of each subcontractor or supplier that the Owner is a third-party beneficiary of the contract. The Contractor's agreements with its subcontractor(s) and supplier(s) shall require that in the event of default under, or termination of, this Contract for Construction, and upon request of the Owner, the Contractor's subcontractor(s) and supplier(s) will perform services for the Owner.
  - The Contractor shall include in its agreements with its subcontractor(s) and supplier(s) a provision which contains the acknowledgment and agreement of the subcontractor or supplier that it has received and reviewed the applicable terms, conditions and requirements of this Contract for Construction that are included by reference in its written contract with the Contractor, and that it will abide by those terms, conditions and requirements.
14. **RIGHTS AND REMEDIES:** No provision in this document or in the vendor's offer shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of contract. The failure of the City to insist upon the strict performance of any term or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the contract, or by law, or the City's acceptance of and payment for materials or services, shall not release the Contractor from any responsibilities or obligations imposed by this contract or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of the Contract.
15. **INDEMNIFICATION:** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the City, and its officers and employees, from liabilities, damages, losses and costs, including reasonable attorney fees and court costs, but only to the extent caused by the negligence, recklessness or intentional wrongful conduct of the Contractor in the performance of the contract. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.
16. **OVERCHARGES BY ANTITRUST VIOLATIONS:** The City maintains that, in practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Contractor hereby assigns to the City any and all claims for such overcharges as to the goods and services used to fulfill the Contract.
17. **FORCE MAJEURE:** Except for payment for sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force Majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without



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its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; acts of terror, hate crimes affecting public order; riots; strikes; mobilization; labor disputes; civil disorders; fire; floods; lockouts, injunctions-intervention-acts, or failures or refusals to act by government authority; events or obstacles resulting from a governmental authority's response to the foregoing; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence. The force majeure shall be deemed to commence when the party declaring force majeure notifies the other party of the existence of the force majeure and shall be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with this Contract.

Force majeure shall not include the following occurrences:

- a. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences.
- b. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this Force Majeure term and Condition.

Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure. If either party is delayed at any time in the progress of the work by force majeure, then the delayed party shall notify the other party in writing of such delay within forty-eight (48) hours commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand delivered or mailed *Certified-Return Receipt* and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing. The time of completion shall be extended by contract modification for a period of time equal to the time that the results or effects of such delay prevent the delayed party from performing in accordance with this contract.

18. **RIGHT TO ASSURANCE:** Whenever one party to this contract in good faith has reason to question the other party's intent to perform he may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
19. **RIGHT TO AUDIT RECORDS:** The City may, at reasonable times and places, audit the books and records of any Contractor as related to any contract held with the City. This right to audit also empowers the City to inspect the papers of any Contractor or Subcontractor employee who works on this contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty made pursuant to Paragraph 3 above..
20. **WARRANTIES:** Contractor warrants that all material, service or construction delivered under this contract shall conform to the specifications of this contract. Unless otherwise stated in Contractor's response, the City is responsible for selecting items, their use, and the results obtained from any other items used with the items furnished under this contract. Mere receipt of shipment of the material/service specified and any inspection incidental thereto by the City shall not alter or affect the obligations of the Contractor or the rights of the City under the foregoing warranties. Additional warranty requirements may be set forth in the solicitation.
21. **INSPECTION:** All material and/or services are subject to inspection and acceptance by the City. Materials and/or services failing to conform to the specifications of this Contract will be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. The City may elect to do any or all of the following:
  - a. Waive the non-conformance.
  - b. Stop the work immediately.
  - c. Bring material into compliance.

This shall be accomplished by a written determination from the City.



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22. **TITLE AND RISK OF LOSS:** The title and risk of loss of material and/or service shall not pass to the City until the City actually receives the material or service at the point of delivery, unless otherwise provided within this Contract.
23. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender of materials shall fully comply with all provisions of the Contract. If a tender is made which does not fully conform, this shall constitute a breach of the Contract as a whole.
24. **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Contractor shall deliver conforming materials in each installment of lot of this Contract and may not substitute nonconforming materials. Delivery of nonconforming materials or a default of any nature, at the option of the City, shall constitute a breach of the Contract as a whole.
25. **SHIPMENT UNDER RESERVATION PROHIBITED:** Contractor is not authorized to ship materials under reservation and no tender of a bill of lading will operate as a tender of the materials.
26. **LIENS:** All materials, service or construction shall be free of all liens, and if the City requests, a formal release of all liens shall be delivered to the City.
27. **LICENSES:** Contractor shall have at the time of bid submittal, and shall maintain in current status, all Federal, State and Local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this Contract. The conclusion of the issuing authority in each case is to be deemed conclusive for the purposes of complying with this provision. By submitting a bid for this public contract, you agree that, with respect to the contract, substantial compliance does not meet the minimum requirements of this or any provision hereof, or of any applicable law or other authority, and that strict compliance alone is adequate to meet those requirements, unless the City consents to such substantial compliance in writing at the time of bid submittal. The determination shall be made by the City.
28. **PATENTS AND COPYRIGHTS:** All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the City and shall not be used or released by the Contractor or any other person except with the prior written permission of the City.
29. **PREPARATION OF SPECIFICATIONS BY PERSONS OTHER THAN CITY PERSONNEL:** All specifications shall seek to promote overall economy for the purposes intended and encourage competition and not be unduly restrictive in satisfying the City's needs. No person preparing specifications shall receive any direct or indirect benefit from the utilization of specifications, other than fees paid for the preparation of specifications.
30. **COST OF BID/PROPOSAL PREPARATION:** The City shall not reimburse the cost of developing presenting or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner.
31. **PUBLIC RECORD:** All offers submitted in response to this solicitation shall become the property of the City and shall become a matter of public record available for review, subsequent to the award notification, in accordance with the City's Procurement Code. However, subsequent to the award of the contract, any information and documents obtained by the City during the course of an audit conducted in accordance with Paragraph 20 above for the purpose of determining compliance by Contractor or a Subcontractor with the Contractor Immigration Warranty mandated by Paragraph 3 above shall remain confidential and shall not be made available for public review or produced in response to a public records request, unless the City is ordered or otherwise directed to do so by a court of competent jurisdiction.
32. **ADVERTISING:** Contractor shall not advertise or publish information concerning this Contract, without prior written consent of the City.
33. **DELIVERY ORDERS:** The City shall issue a Purchase Order for the material and/or services covered by this contract. All such documents shall reference the contract number as indicated on the Offer and Contract Award
34. **FUNDING:** Any contract entered into by the City of Peoria is subject to funding availability. Fiscal years for the City of Peoria are July 1 to June 30. The City Council approves all budget requests. If a specific funding request is not approved, the contract shall be terminated.



## STANDARD TERMS AND CONDITIONS

**Materials Management  
Procurement**  
9875 N. 85<sup>th</sup> Ave., 2<sup>nd</sup> Fl.  
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Fax: (623) 773-7118

35. **PAYMENT:** A separate invoice shall be issued for each shipment of material or service performed, and no payment will be issued prior to receipt of material and/or services and correct invoice.
36. **PROHIBITED LOBBYING ACTIVITIES:** The Offeror, his/her agent or representative shall not contact, orally or in any written form any City elected official or any City employee other than the Materials Management Division, the procuring department, City Manager, Deputy City Manager or City Attorney's office (for legal issues only) regarding the contents of this solicitation or the solicitation process commencing from receipt of a copy of this request for proposals and ending upon submission of a staff report for placement on a City Council agenda. The Materials Manager shall disqualify an Offeror's proposal for violation of this provision. This provision shall not prohibit an Offeror from petitioning an elected official after submission of a staff report for placement on a City Council agenda or engaging in any other protected first amendment activity after submission of a staff report for placement on a City Council agenda.
37. **PROHIBITED POLITICAL CONTRIBUTIONS:** Consultant during the term of this Agreement shall not make a contribution reportable under Title 16, Chapter 6, Article 1, Arizona Revised Statutes to a candidate or candidate committee for any city elective office during the term of this Agreement. The City reserves the right to terminate the Agreement without penalty for any violation of this provision.



## SPECIAL TERMS AND CONDITIONS

Solicitation Number: P16-0061

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1. **Purpose:** Pursuant to provisions of the City Procurement Code, the City of Peoria, Materials Management Division intends to establish a contract for Road Materials.
2. **Authority:** This Solicitation as well as any resultant contract is issued under the authority of the City. No alteration of any resultant contract may be made without the express written approval of the City Materials Manager in the form of an official contract amendment. Any attempt to alter any contract without such approval is a violation of the contract and the City Procurement Code. Any such action is subject to the legal and contractual remedies available to the City inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the contractor.
3. **Offer Acceptance Period:** In order to allow for an adequate evaluation, the City requires an offer in response to this Solicitation to be valid and irrevocable for sixty (60) days after the opening time and date.
4. **Evaluation:** In accordance with the City of Peoria Procurement Code, awards shall be made to the lowest responsible and responsive bidder whose bid conforms in all material respects to the Invitation For Bid.
5. **Eligible Agencies:** Any contract resulting from this Solicitation shall be for the use of all City of Peoria departments, agencies and boards.
6. **Cooperative Purchasing:** While this contract is for the City of Peoria, other public agencies and political subdivisions may express interest in utilizing the contract. In addition to the City of Peoria, and with approval of the contractor, this contract may be extended for use by other eligible public agencies (i.e. municipalities, school districts, nonprofit educational institutions, public health institutions, community facilities districts, and government agencies of the State). Eligible public agencies may elect to utilize the contract through cooperative purchasing (or piggybacking) on the contract and do so at their discretion. No volume is implied or guaranteed, and the contractor must be in agreement with the cooperative transaction. The Strategic Alliance for Volume Expenditures (SAVE), a group of school districts and other public agencies, have signed an intergovernmental cooperative purchase agreement to obtain economies of scale. As a member of SAVE, the City of Peoria will act as the lead agency. Any such usage by other participating public agencies must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective public agency. Potential participating public agencies (i.e. municipalities, school districts, nonprofit educational institutions, public health institutions, community facilities districts, and government agencies of the State) recognize potential equipment, logistical and capacity limitations by the contractor may limit the contractor's ability to extend use of this contract. Any orders placed to the contractor will be placed by the specific public agency participating in this purchase, and payment for purchases made under this agreement will be the sole responsibility of each participating public agency. The City of Peoria shall not be responsible for any disputes arising out of transactions made by others.
7. **Contract Type:** Fixed Price
8. **Term of Contract:** The term of any resultant contract shall commence on the first day of the month following the date of award and shall continue for a period of one (1) year thereafter, unless terminated, cancelled or extended as otherwise provided herein.
9. **Contract Extension:** By mutual written contract amendment, any resultant contract may be extended for supplemental periods of up to a maximum of forty-eight (48) months.
10. **Price Adjustment:** The City of Peoria, Materials Management Division will review fully documented requests for price increases after the contract has been in effect for 365 days. The requested price increase must be based upon a cost increase that was clearly unpredictable at the time of the offer and can be shown to directly effect the price of the item concerned. The City of Peoria, Materials Management Division will determine whether the requested price increase, or an alternative option, is in the best interest of the City. The contractor shall likewise offer any published price reduction to the City concurrent with its announcement to other customers. Advanced 30 day written notification by the contractor is required for any price changes. All price adjustments will be effective on the first day of the month following approval or acceptance by the City of Peoria, Materials Management Division. A price reduction adjustment may be offered at any time during the term of a contract and shall become effective upon notice.
11. **Interpretation of Plans, Specifications and Drawings:** If any person contemplating submitting a bid for the proposed



## SPECIAL TERMS AND CONDITIONS

Solicitation Number: P16-0061

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Contract is in doubt as to the true meaning of any part of the Plans, Specifications or other proposed Contract Documents, or finds discrepancies in, or omissions from the Drawings or Specifications, he may, no later than five (5) days prior to the representative bid opening, submit to the City Engineer or his authorized representative a written request for an interpretation or correction thereof. Any interpretations or corrections of the proposed documents will be made only by Amendment duly issued and a copy of each such will be mailed or delivered to each person receiving a set of such documents. The City of Peoria will not be responsible for any other explanations or interpretations of the proposed documents.

12. **Conditions of Work:** Each Bidder must inform himself fully of the conditions relating to the construction of the project and the employment of labor thereon. Failure to do so will not relieve the Contractor of his obligation to furnish all material and labor necessary to carry out the provisions of this Contract. Insofar as possible the Contractor, in carrying out his work, must employ such methods or means as will not cause any interruption of or interference with the work of any other Contractor.
13. **Affirmative Action:** It is the policy of the City of Peoria that suppliers of goods or services to the City adhere to a policy of equal employment opportunity and demonstrate an affirmative effort to recruit, hire, and promote regardless of race, color, religion, gender, national origin, age or disability. The City of Peoria encourages diverse suppliers to respond to solicitations for products or services.
14. **Approval of Substitutions:** The materials, products, and equipment described in the Documents and Addenda establish a standard or required function, dimension, appearance, and quality to be met by any proposed substitution. No substitute will be considered unless written request for approval has been received by the City or its representative at least ten (10) days prior to the scheduled closing time for receipt of bids. Each such request shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitute including any drawings, cuts, performance, and test data and any other information necessary for evaluation of the substitute. If a substitute is approved, the approval shall be acknowledged in writing. Bidder shall not consider approvals made in any other manner. All requests for approval of substitutions must be submitted by Prime Contractor.
15. **Use of Equals:** When the specifications for materials, articles, products, and equipment state "or equal", Contractor may bid upon, and use materials, articles, products, and equipment which will perform equally the duties imposed by the general design. The City Engineering Division will have the final approval of all materials, articles, products, and equipment proposed to be used as an "equal." It shall not be purchased or installed without prior written approval from the City or its representative. All requests for approval of equals must be submitted by Prime Contractor.  

Approvals for "equals," before bid opening, may be requested in writing to the City Engineering Division for approval. Requests must be received at least ten (10) days prior to the date set for opening of the Bid. The request shall state the name of the material, article, product, or equipment for which the item is sought to be considered and equal and a complete description of the proposed equal including any drawings, cuts, performance specifications, test data and any other information necessary for approval of the equal. All approvals will be issued in writing. All requests for approval of equals must be submitted by Prime Contractor.
16. **Independent Contractor:**
  - a. **General**
    - i. The Contractor acknowledges that all services provided under this Agreement are being provided by him as an independent contractor, not as an employee or agent of the City of Peoria.
    - ii. Both parties agree that this Agreement is nonexclusive and that Contractor is not prohibited from entering into other contracts nor prohibited from practicing his profession elsewhere.
  - b. **Liability**
    - i. The City of Peoria shall not be liable for any acts of Contractor outside the scope of authority granted under this Agreement or as the result of Contractor's acts, errors, misconduct, negligence, omissions and intentional acts.



## SPECIAL TERMS AND CONDITIONS

Solicitation Number: P16-0061

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- ii. To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Contractor, its employees, agents, or any tier of subcontractors in the performance of this Contract. Contractor's duty to defend, hold harmless and indemnify the City, its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the Contractor or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the Contractor may be legally liable.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

c. Other Benefits

The Contractor is an independent contractor, therefore, the City will not provide the Contractor with health insurance, life insurance, workmen's compensation, sick leave, vacation leave, or any other fringe benefits. Further, Contractor acknowledges that he is exempt from coverage of the Comprehensive Benefit and Retirement Act (COBRA). Any such fringe benefits shall be the sole responsibility of Contractor.

17. **Key Personnel:** It is essential that the Contractor provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this contract. The Contractor must agree to assign specific individuals to the key positions.

- a. The Contractor agrees that, once assigned to work under this contract, key personnel shall not be removed or replaced without written notice to the City.
- b. If key personnel are not available for work under this contract for a continuous period exceeding 30 calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Contractor shall immediately notify the City, and shall, subject to the concurrence of the City, replace such personnel with personnel of substantially equal ability and qualifications.

18. **Insurance Requirements:** The Contractor, at Contractor's own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed, possessing a current A.M. Best, Inc. Rating of A-, or approved unlicensed to do business in the State of Arizona with policies and forms satisfactory to the City.

All required herein shall be maintained in full force and effect until all work required to be performed under the terms of the Contract is satisfactorily completed and formally accepted; failure to do so may, at the sole direction of the City, constitute a material breach of this Contract.

The Contractor's insurance shall be primary insurance, and any insurance or self insurance maintained by the City shall not contribute to it.

Any failure to comply with the claim reporting provisions of the policies or any breach of an insurance policy warranty shall not affect coverage afforded under the policy to protect the City.

The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the City, its agents, representatives, directors, officers, and employees for any claims arising out of the Contractor's work or service.

The insurance policies may provide coverage which contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to the City under such policies. The Contractor shall be solely responsible for deductible and/or self-insured retention and the City, at its option, may require the Contractor to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and



## SPECIAL TERMS AND CONDITIONS

Solicitation Number: P16-0061

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unconditional letter of credit.

The City reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and endorsements. The City shall not be obligated, however, to review same or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of the City's right to insist on, strict fulfillment of Contractor's obligations under this Contract.

The insurance policies, except Workers' Compensation, required by this Contract shall name the City, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

### 19. Required Insurance Coverage:

#### a. General Liability

Contractor shall maintain Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence with a \$2,000,000 Products and Completed Operations Aggregate and \$2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products/completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Contract, which coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG 00011207 or any replacement thereof. The coverage shall not exclude X, C, U.

Such policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, nor any provision which would serve to limit third party action over claims.

The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s, Additional Insured, Form B, CG 20370704, and shall include coverage for Contractor's operations and products and completed operations.

Any Contractor subcontracting any part of the work, services or operations awarded to the Contractor shall purchase and maintain, at all times during prosecution of the work, services or operations under this Contract, an Owner's and Contractor's Protective Liability insurance policy for bodily injury and property damage, including death, which may arise in the prosecution of the Work or Contractor's operations under this Contract. Coverage shall be on an occurrence basis with a limit not less than \$1,000,000 per occurrence, and the policy shall be issued by the same insurance company that issues the Contractor's Commercial General Liability insurance.

#### b. Automobile Liability

Contractor shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to the Contractor's any owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor's work. Coverage will be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00010306, or any replacements thereof). Such insurance shall include coverage for loading and off loading hazards. If hazardous substances, materials or wastes are to be transported, MCS 90 endorsement shall be included and \$5,000,000 per accident limits for bodily injury and property damage shall apply.

#### c. Workers' Compensation

The Contractor shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of the work; and, Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.

In case any work is subcontracted, the Contractor will require the Subcontractor to provide Workers' Compensation and Employer's Liability to at least the same extent as required of the Contractor.

20. **Certificates of Insurance:** Prior to commencing Services under this Contract, Contractor shall furnish the City with Certificates of Insurance (naming the City as additionally insured), and formal endorsements as required by the Contract,



## SPECIAL TERMS AND CONDITIONS

Solicitation Number: P16-0061

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Procurement  
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issued by Contractor's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Contract are in full force and effect.

In the event any insurance policy(ies) required by this contract is(are) written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of the Contractor's work or services and as evidenced by annual Certificates of Insurance.

If a policy does expire during the life of the contract, a renewal certificate must be sent to the City fifteen (15) days prior to the expiration date.

All Certificates of Insurance required by this Contract shall be identified with a bid serial number and title. A \$25.00 administrative fee shall be assessed for all Certificates received without the appropriate bid serial number and title.

21. **City of Peoria Business License:** Peoria City Code requires that all persons conducting business in the City of Peoria must first obtain a license. This includes businesses within the Peoria city limits, or those outside the limits who conduct business or perform services within Peoria. For business license questions or to obtain a license, please contact the City of Peoria Sales Tax & License Division at (623) 773-7160 or via email at [salestax@peoriaAZ.gov](mailto:salestax@peoriaAZ.gov).
22. **Estimated Quantities:** The City anticipates considerable activity resulting from contracts that will be awarded as a result of this solicitation; however, no commitment of any kind is made concerning quantities actually acquired and that fact should be taken into consideration by each potential contractor.
23. **Ordering Process:** Upon award of a contract by the City of Peoria, Materials Management Division may procure the specific material and/or service awarded by the issuance of a purchase order to the appropriate contractor. The award of a contract shall be in accordance with the City of Peoria Procurement Code and all transactions and procedures required by the Code for public bidding have been complied with. A purchase order for the awarded material and/or service that cites the correct contract number is the only document required for the department to order and the contractor to delivery the material and/or service.  

Any attempt to represent any material and/or service not specifically awarded as being under contract with the City of Peoria is a violation of the contract and the City of Peoria Procurement Code. Any such action is subject to the legal and contractual remedies available to the City inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the contractor.
24. **Invoices:** The Contractor shall submit invoices to the City of Peoria Accounts Payable Department, 8401 W. Monroe St, Peoria AZ 85345. Invoices may also be submitted electronically to [accountspayable@peoriaaz.gov](mailto:accountspayable@peoriaaz.gov).
25. **Billing:** All billing notices to the City shall identify the specific item(s) being billed and the purchase order number. Items are to be identified by the name, model number, and/or serial number most applicable. Any purchase/delivery order issued by the requesting agency shall refer to the contract number resulting from this solicitation.
26. **Current Products:** All products offered in response to this solicitation shall be new and in current and ongoing production shall have been formally announced for general marketing purposes; shall be a model or type currently functioning in a user (paying customer) environment and capable of meeting or exceeding all specifications and requirements set forth in this solicitation.
27. **Product Discontinuance:** The City may award contracts for particular products and/or models of equipment as a result of this solicitation. In the event that a product or model is discontinued by the manufacturer, the City at its sole discretion may allow the contractor to provide a substitute for the discontinued item. The contractor shall request permission to substitute a new product or model and provide the following:
  - a. A formal announcement from the manufacturer that the product or model has been discontinued.
  - b. Documentation from the manufacturer that names the replacement product or model.
  - c. Documentation that provides clear and convincing evidence that the replacement meets or exceeds all specifications required by the original solicitation.



## SPECIAL TERMS AND CONDITIONS

Solicitation Number: P16-0061

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- d. Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model.
  - e. Documentation confirming that the price for the replacement is the same as or less than the discontinued product or model.
28. **Inventory:** The City of Peoria has an ongoing requirement for the material indicated in this solicitation. It is an express condition of any award that a contractor shall maintain a reasonable stock on hand for delivery to the requesting agency. Failure to maintain such a stock may result in cancellation.
29. **Brand Names:** Any manufacturer's names, trade names, brand names or catalog numbers used in the specifications are for the purpose of describing and establishing the quality level, design and performance desired. Such references are not intended to limit or restrict bidding by other vendors but are intended to establish the quality, design or performance which is desired. Any offer which proposes like quality, design or performance will be considered.
30. **Safety Standards:** All items supplied on this contract shall comply with the current applicable Occupational Safety and Health Standards of the State of Arizona Industrial Commission, the National Electric Code, and the National Fire Protection Association Standards.
31. **Multiple Awards:** In order to assure that any ensuing contracts will allow the City to fulfill current and future requirements, the City reserves the right to award contracts to multiple companies. The actual utilization of any contract will be at the sole discretion of the City. The fact that the City may make multiple awards should be taken into consideration by each potential contractor.
32. **Contract Termination:** Any contract entered into as a result of this Solicitation is for the convenience of the City and as such, may be terminated without default by the City by providing a written thirty (30) day notice of termination.
33. **Contract Default:** The City, by written notice of default to the contractor, may terminate the whole or any part of this contract in any one of the following circumstances:
- a. If the contractor fails to make delivery of the materials/supplies or to perform the services within elements of the project schedule or the time specified; or
  - b. If the contractor fails to perform any of the other provisions of this contract; and fails to remedy the situation within a period of ten (10) days after receipt of notice.
34. **Contract Default/Cancellation:** The City reserves the right to cancel the whole or any part of this contract due to failure by the contractor to carry out any obligation, term or condition of the contract. The City will issue written notice to the contractor for acting or failing to act as in any of the following:
- a. The contractor provides material that does not meet the specifications of the contract;
  - b. The contractor fails to adequately perform the services set forth in the specifications of the contract;
  - c. The contractor fails to complete the work required or to furnish the materials required within the time stipulated in the contract;
  - d. The contractor fails to make progress in the performance of the contract and/or gives the City reason to believe that the contractor will not or cannot perform to the requirements of the contract.
- Upon receipt of the written notice of concern, the contractor shall have ten (10) days to provide a satisfactory response to the City. Failure on the part of the contractor to adequately address all issues of concern may result in the City resorting to any single or combination of the following remedies:
- a. Cancel any contract;
  - b. Reserve all rights or claims to damage for breach of any covenants of the contract;



## SPECIAL TERMS AND CONDITIONS

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- c. Perform any test or analysis on materials for compliance with the specifications of the contract. If the results of any test or analysis find a material non-compliant with the specifications, the actual expense of testing shall be borne by the contractor;
  - d. In case of default, the City reserves the right to purchase materials, or to complete the required work in accordance with the City Procurement Code. The City may recover any actual excess costs from the contractor by:
    - i. Deduction from an unpaid balance;
    - ii. Any combination of the above or any other remedies as provided by law.
- 35. Identity Theft Prevention:** The Contractor shall establish and maintain Identity Theft policies, procedures and controls for the purpose of assuring that "personal identifying information," as defined by A.R.S. § 13-2001(10), as amended, contained in its records or obtained from the City or from others in carrying out its responsibilities under the Contract, is protected at all times and shall not be used by or disclosed to unauthorized persons. Persons requesting such information should be referred to the City. Contractor also agrees that any "personal identifying information" shall not be disclosed other than to employees or officers of Contractor as needed for the performance of duties under the Contract. Contractor agrees to maintain reasonable policies and procedures designed to detect, prevent and mitigate the risk of identity theft. Contractor is required under this contract to review the City of Peoria's Identity Theft Program and to report to the Program Administrator any Red Flags as defined within that program. At a minimum, the contractor will have the following Identity Theft procedures in place:
- a. Solicit and retain only the "personal identifying information" minimally necessary for business purposes related to performance of the Contract.
  - b. Ensure that any website used in the performance of the contract is secure. If a website that is not secure is to be used, the City shall be notified in advance before any information is posted. The City reserves to right to restrict the use of any non-secure websites under this contract.
  - c. Ensure complete and secure destruction of any and all paper documents and computer files at the end of the contracts retention requirements.
  - d. Ensure that office computers are password protected and that computer screens lock after a set period of time.
  - e. Ensure that offices and workspaces containing customer information are secure.
  - f. Ensure that computer virus protection is up to date.
- 36. Protest Policy and Procedures:** The City of Peoria protest policy and procedures are available for review at the following public websites and as per ARS 34-603.C.2(f).
- a. The City of Peoria Protest Policy and Procedures are available online at <http://www.peoriaaz.gov/newssecondary.aspx?id=2071>.  
The policy is contained within the City of Peoria Procurement Code, Chapter 2- Administration, section 2-321. Procurement Code Protests; Informal and Formal.
  - b. The specific protest procedures are contained in the Materials Management "Procurement Administrative Guidelines" and can be accessed at <http://www.peoriaaz.gov/NewSecondary.aspx?id=54937> in the "Downloads" box on the right side of the web page.



## SPECIFICATIONS

Solicitation Number: P16-0061

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**I. PURPOSE:** The City of Peoria is soliciting bids to provide for the continuous purchase and delivery (or will-call pickup) of road materials including hot mix asphalt, ABC, slurry sand, 1/2 sack slurry and no slack slurry. City of Peoria road materials are anticipated to total approximately \$270,000 annually.

**A. Base Materials for Stockpile at City Yard and Special Projects:**

**1. The materials required by the City shall be as follows:**

- a. ABC crushed aggregate per M.A.G. Specifications, Sections 702 .
- b. Concrete Sand per M.A.G. per M.A.G. Specifications, Section 701 and ASTM C33
- c. Slurry Sand Types 1, 2 and 3 per M.A.G. Specifications, Section 715
- d. 1" - 3" Track out Rock per M.A.G. Specifications, Section 701
- e. 1", 1/2", and 3/8" washed sand per M.A.G. Specifications, Section 701 and ASTM D448
- f. 1/2 sack slurry per M.A.G. Specifications, Section 728
- g. No sack slurry per M.A.G. Specifications, Section 728

**2. Stockpile:**

- a. Delivery location for Stockpile shall be:

Public Services Yard  
8850 N. 79th Avenue  
Peoria, Arizona 85345

- b. Pricing for Stockpile shall include delivery and unloading charges.

**3. Special Projects:**

- a. Delivery for Special Projects shall be:

- On-site within Peoria City Limits
- Notification of delivery upon order

- b. Materials shall be unloaded only in selected locations approved by the City.

- c. Contractor shall provide pricing for Special Projects delivery, unloading and standby as specified on the Price Sheet.



## SPECIFICATIONS

Solicitation Number: P16-0061

**Materials Management  
Procurement**  
9875 N. 85<sup>th</sup> Ave., 2<sup>nd</sup> Fl.  
Peoria, Arizona 85345-8560  
Phone: (623) 773-7115  
Fax: (623) 773-7118

### **B. Asphalt and Asphalt with Cement for Street Repair:**

1. **Asphalt Mix:** Contractors for use on City of Peoria projects shall use the following set of asphalt mix designs: M.A.G. specification Section 710 and, or City of Phoenix Supplement 710 to the M.A.G. Uniform Standard Specification for Public Works.
2. **Will-Call Requirement by City for Approved Mixes:** Material shall be available for pick up on a daily basis on regular workdays, Monday through Friday, excluding holidays.
  - a. Asphalt shall be available for pick-up during normal working hours of Monday through Friday, 6:00 A.M. to 4:00 P.M.
  - b. Asphalt provided shall be per M.A.G. specifications section 701.3.1
  - c. Location of plant shall not exceed twenty (20) miles in any one-direction from the location of 79th Avenue and Olive, Peoria, Arizona.
  - d. When City picks up new material, contractor shall accept the City's used load of roadway materials for recycling, at no additional charge to the City.
3. **Delivery Requirement by City for Approved Mixes:** Material shall be delivered as required on a daily basis on regular workdays, Monday through Friday, excluding holidays.
  - a. Asphalt shall be available for delivery during normal working hours of Monday through Friday, 6:00 A.M. to 4:00 P.M.
  - b. Asphalt provided shall be per M.A.G. specifications section 701.3.1
  - c. When delivery is required, the City shall notify the Contractor of the location at the time of the order. All deliveries shall be within Peoria City Limits.
  - d. Materials shall be unloaded only in selected locations approved by the City.
  - e. Contractor shall provide pricing for delivery, unloading and standby as specified on the Price Sheet.
4. **Sample Test:** Should the City have a question on a possible batch of faulty mix, the vendor shall perform a sample test at no additional cost to the City. Test results shall be provided to the City in a reasonable time frame.
5. **Off-Hour Requirements - Optional**
  - a. Upon 24 hours notification, contractor shall open plant and furnish hot mix on a pickup basis after normal business hour (evenings and nights) or on weekends.
  - b. Contractor shall provide pricing for plant opening and price differential as specified on the Price Sheet.



## SUBMITTAL REQUIREMENTS

Solicitation Number: P16-0061

**Materials Management  
Procurement**  
9875 N. 85<sup>th</sup> Ave., 2<sup>nd</sup> Fl.  
Peoria, Arizona 85345-6560  
Phone: (623) 773-7115  
Fax: (623) 773-7118

- I. Contact:** All questions regarding the solicitation should be sent in writing via email to the purchasing agent. Questions must be submitted within forty eight (48) hours prior to bid closing.

The designated purchasing agent for this solicitation is:

Christine Finney, Contract Officer  
Phone (623) 773-7531  
Email Christine.finney@peoriaaz.gov

*Contact with City staff, other than the designated contact person indicated in the IFB, regarding this solicitation is strictly prohibited during the bidding process.*

- II. Bid Due Date and Time:** Bids are due **May 26, 2016, no later than 2:00pm (Arizona Time)** and shall be delivered in a sealed envelope or package and marked as follows:

Company Name  
**IFB #: P16-0061, Road Materials**  
Attn: Christine Finney, Contract Officer

- III. Bid Submittal Location:** Bids shall be submitted to the following location by mail or in person (no fax or electronic submittals):

City of Peoria Materials Management  
9875 N. 85<sup>th</sup> Avenue – 2<sup>nd</sup> Floor  
Peoria, Arizona 85345



# PRICE SHEET

Solicitation Number: P16-0061

**Materials Management**  
**Procurement**  
 9875 N. 85<sup>th</sup> Ave., 2nd Fl.  
 Peoria, Arizona 85345-6560  
 Phone: (623) 773-7115  
 Fax: (623) 773-7118

Company Name: Calmat Company dba Vulcan Materials

Item	Description of material and/or services	Qty	Unit	Unit Price	Extended Price
	<i>Per Specifications (One Year Estimated Quantity)</i>				
I.	Base Material				
	ABC	500	Too	\$ 5.50	\$ 2750.00
	Concrete Sand	200	Too	\$ 10.00	\$ 2000.00
	Slurry Sand Types 1,2 and 3	200	Too	\$ 19.00	\$ 3800.00
	1"-3" Track Out Rock	100	Too	\$ 10.50	\$ 1050.00
	1", 1/2" & 3/8" Washed Sand	200	Too	\$ 10.00	\$ 2000.00
	12 Sack Slurry M.A.G. ABC	100	CUYD	\$ no bid	\$ no bid
	No Sack Slurry M.A.G. ABC	100	CUYD	\$ no bid	\$ no bid
	<b>Section "I" Subtotal</b>				<b>\$ 11,600.00</b>
II.	Base Material Delivery Charges				
	ABC, Concrete Sand, Washed Sand or Track Out Rock - Less than 20 Tons	1	Job	\$ 187.00	
	ABC, Concrete Sand, Washed Sand or Track Out Rock - 20 to less than 40 Tons	1	Job	\$ 340.00	
	ABC, Concrete Sand, Washed Sand or Track Out Rock - 40 to less than 60 Tons	1	Job	\$ 510.00	
	ABC, Concrete Sand, Washed Sand or Track Out Rock - 60 to less than 80 Tons	1	Job	\$ 680.00	
	ABC, Concrete Sand, Washed Sand or Track Out Rock - 80 to less than 100Tons	1	Job	\$ 850.00	
	Minimum Load for Delivery <u>22 tons</u>				
	Base Material Delivery Charges				
	Slurry - Less than 2 Yards	1	Job	\$ No bid	
	Slurry - 2 to less than 4 Yards	1	Job	\$ No bid	
	Slurry - 4 to less than 7 Yards	1	Job	\$ No bid	
	Slurry - 7 to less than 10 Yards	1	Job	\$ No bid	
	Slurry - 10 to less than 15 Yards	1	Job	\$ No bid	
	Slurry - 15 to less than 20 Yards	1	Job	\$ No bid	
	Slurry - 20 to less than 30 Yards	1	Job	\$ No bid	
	Slurry - 30 to less than 40 Yards	1	Job	\$ No bid	
	Slurry - 40 to less than 50 Yards	1	Job	\$ No bid	
	Standby Time - Flat hourly charge		Hour	\$ No bid	
	Minimum Load for Delivery _____				



# PRICE SHEET

Solicitation Number: P16-0061

**Materials Management**  
**Procurement**  
 9875 N. 85<sup>th</sup> Ave., 2nd Fl.  
 Peoria, Arizona 85345-6660  
 Phone: (623) 773-7115  
 Fax: (623) 773-7118

Company Name: Calmat Company dba Vulcan Materials

Item	Description of material and/or services	Qty	Unit	Unit Price	Extended Price
	<b>Asphalt Per Specifications</b>				
	3/8" M.A.G. High Volume Traffic Hot Mix Asphalt	200	Ton	\$ 72.00	\$ 14,400.00
	1/2" M.A.G. High Volume Traffic Hot Mix Asphalt	200	Ton	\$ 63.00	\$ 12,600.00
	3/4" M.A.G. High Volume Traffic Hot Mix Asphalt	200	Ton	\$ 63.00	\$ 12,600.00
	1/2" City of Phoenix D High Volume Traffic Hot Mix Asphalt	500	Ton	\$ 63.00	\$ 31,500.00
	3/4" City of Phoenix C High Volume Traffic Hot Mix Asphalt	1000	Ton	\$ 63.00	\$ 63,000.00
	3/8" M.A.G. Low Volume Traffic Hot Mix Asphalt	200	Ton	\$ 72.00	\$ 14,400.00
	1/2" M.A.G. Low Volume Traffic Hot Mix Asphalt	200	Ton	\$ 63.50	\$ 12,700.00
	3/4" M.A.G. Low Volume Traffic Hot Mix Asphalt	200	Ton	\$ 63.50	\$ 12,700.00
	1/2" City of Phoenix D Low Volume Traffic Hot Mix Asphalt	1500	Ton	\$ 63.50	\$ 95,250.00
	3/4" City of Phoenix C Low Volume Traffic Hot Mix Asphalt	500	Ton	\$ 63.50	\$ 31,750.00
	1/2" M.A.G. Parking Lot Hot Mix Asphalt	200	Ton	\$ 63.50	\$ 12,700.00
	Cold Mix Asphalt	200	Ton	\$ 90.00	\$ 18,000.00
	<b>Section "II" Subtotal</b>				<b>\$ 331,600.00</b>
<b>III.</b>	<b>Hot Mix Asphalt Delivery Charges</b>				
	Hot Mix Asphalt - Less than 20 Tons	1	Job	\$ 200.00	
	Hot Mix Asphalt - 20 to less than 40 Tons	1	Job	\$ 400.00	
	Hot Mix Asphalt - 40 to less than 60 Tons	1	Job	\$ 600.00	
	Hot Mix Asphalt - 60 to less than 80 Tons	1	Job	\$ 800.00	
	Hot Mix Asphalt - 80 to less than 100 Tons	1	Job	\$ 1000.00	
	Hot Mix Asphalt - 100 to less than 120 Tons	1	Job	\$ 1200.00	
	Hot Mix Asphalt - 120 to less than 140 Tons	1	Job	\$ 1400.00	
	Hot Mix Asphalt - 140 to less than 160 Tons	1	Job	\$ 1600.00	
	Hot Mix Asphalt - 160 to less than 180 Tons	1	Job	\$ 1800.00	
	Hot Mix Asphalt - 180 to less than 200 Tons	1	Job	\$ 2000.00	
	Hot Mix Asphalt - 200 to less than 220 Tons	1	Job	\$ 2200.00	
	Hot Mix Asphalt - 220 to less than 240 Tons	1	Job	\$ 2400.00	
	Hot Mix Asphalt - 240 to less than 260 Tons	1	Job	\$ 2600.00	
	Hot Mix Asphalt - 260 to less than 280 Tons	1	Job	\$ 2800.00	
	Hot Mix Asphalt - 280 to less than 300 Tons	1	Job	\$ 3000.00	
	Standby Time	1	Hour	\$ 87.50	
	Minimum Load for Delivery <span style="float: right;"><u>22 tons</u></span>				



## QUESTIONNAIRE

Solicitation Number: P16-0064

### Materials Management Procurement

9875 N. 85<sup>th</sup> Ave., 2<sup>nd</sup> Fl.  
Peoria, Arizona 85345-6560  
Phone: (623) 773-7115  
Fax: (623) 773-7118

Has your firm been certified by any jurisdiction in Arizona as a minority or woman owned business enterprise? Yes \_\_\_\_\_, No .

If yes, please provide details and documentation of the certification.

## Asphalt Plant and Location

* Tax by Plant	Location Name	Address	City	State	Zip Code	Rail
	19th Ave Plant	3640 South 19th Avenue	Phoenix	Arizona	85009	8.3
	Gomez Batch Plant	5150 South 27th Ave	Phoenix	Arizona	85041	6.3
	Sun City	14521 North 115th Ave	El Mirage	Arizona	85335	9.3
	West 43rd Plant	4850 South 47th Avenue	Phoenix	Arizona	85339	6.3
	West Broadway Plant	7845 West Broadway Rd	Phoenix	Arizona	85043	6.3

**LINKING AGREEMENT  
BETWEEN  
THE CITY OF GLENDALE, ARIZONA  
AND  
CALMAT CO. DBA VULCAN MATERIALS COMPANY**

**EXHIBIT B**  
Scope of Work

**PROJECT**

Purchase and delivery of road materials on an as needed basis.

**LINKING AGREEMENT  
BETWEEN  
THE CITY OF GLENDALE, ARIZONA  
AND  
CALMAT COMPANY DBA VULCAN MATERIALS**

**EXHIBIT C**

**METHOD AND AMOUNT OF COMPENSATION**

Method and amount of compensation is based on the City of Peoria ACON24016 Road Materials contract.

**NOT TO EXCEED AMOUNT**

The total amount of compensation paid to Contractor for full completion of all work required by the Project must not exceed \$100,000 annually or \$500,000 for the entire term of the Agreement.

**DETAILED PROJECT COMPENSATION**

See attached Exhibit C



# PRICE SHEET

Solicitation Number: P16-0061

**Materials Management**  
**Procurement**  
 9875 N. 86<sup>th</sup> Ave., 2nd Fl.  
 Peoria, Arizona 85345-6560  
 Phone: (623) 773-7115  
 Fax: (623) 773-7118

Company Name: Calmat Company dba Vulcan Materials

Item	Description of material and/or services	Qty	Unit	Unit Price	Extended Price
<i>Per Specifications (One Year Estimated Quantity)</i>					
I.	Base Material				
	ABC	500	Ton	\$ 5.50	\$ 2750.00
	Concrete Sand	200	Ton	\$ 10.00	\$ 2000.00
	Slurry Sand Types 1,2 and 3	200	Ton	\$ 19.00	\$ 3800.00
	1"-3" Track Out Rock	100	Ton	\$ 10.50	\$ 1050.00
	1", 1/2" & 3/8" Washed Sand	200	Ton	\$ 10.00	\$ 2000.00
	12 Sack Slurry M.A.G. ABC	100	CUYD	\$ no bid	\$ no bid
	No Sack Slurry M.A.G. ABC	100	CUYD	\$ no bid	\$ no bid
	Section "I" Subtotal				\$ 11,600.00
II.	Base Material Delivery Charges				
	ABC, Concrete Sand, Washed Sand or Track Out Rock - Less than 20 Tons	1	Job	\$ 187.00	
	ABC, Concrete Sand, Washed Sand or Track Out Rock - 20 to less than 40 Tons	1	Job	\$ 340.00	
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	ABC, Concrete Sand, Washed Sand or Track Out Rock - 60 to less than 80 Tons	1	Job	\$ 680.00	
	ABC, Concrete Sand, Washed Sand or Track Out Rock - 80 to less than 100 Tons	1	Job	\$ 850.00	
	Minimum Load for Delivery <u>22 tons</u>				
	Base Material Delivery Charges				
	Slurry - Less than 2 Yards	1	Job	\$ No bid	
	Slurry - 2 to less than 4 Yards	1	Job	\$ No bid	
	Slurry - 4 to less than 7 Yards	1	Job	\$ No bid	
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	Slurry - 10 to less than 15 Yards	1	Job	\$ No bid	
	Slurry - 15 to less than 20 Yards	1	Job	\$ No bid	
	Slurry - 20 to less than 30 Yards	1	Job	\$ No bid	
	Slurry - 30 to less than 40 Yards	1	Job	\$ No bid	
	Slurry - 40 to less than 50 Yards	1	Job	\$ No bid	
	Standby Time - Flat hourly charge		Hour	\$ No bid	
	Minimum Load for Delivery _____				



# PRICE SHEET

Solicitation Number: P16-0061

**Materials Management**  
 Procurement  
 9875 N. 85<sup>th</sup> Ave., 2nd Fl.  
 Peoria, Arizona 85345-8560  
 Phone: (623) 773-7115  
 Fax: (623) 773-7118

Company Name: Calmat Company dba Vulcan Materials

Item	Description of material and/or services	Qty	Unit	Unit Price	Extended Price
	<b>Asphalt Per Specifications</b>				
	3/8" M.A.G. High Volume Traffic Hot Mix Asphalt	200	Ton	\$ 72.00	\$ 14,400.00
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	3/8" M.A.G. Low Volume Traffic Hot Mix Asphalt	200	Ton	\$ 72.00	\$ 14,400.00
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	1/2" M.A.G. Parking Lot Hot Mix Asphalt	200	Ton	\$ 63.50	\$ 12,700.00
	Cold Mix Asphalt	200	Ton	\$ 90.00	\$ 18,000.00
	<b>Section "II" Subtotal</b>				<b>\$ 331,600.00</b>
<b>III.</b>	<b>Hot Mix Asphalt Delivery Charges</b>				
	Hot Mix Asphalt - Less than 20 Tons	1	Job	\$ 200.00	
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	Hot Mix Asphalt - 240 to less than 260 Tons	1	Job	\$ 2600.00	
	Hot Mix Asphalt - 260 to less than 280 Tons	1	Job	\$ 2800.00	
	Hot Mix Asphalt - 280 to less than 300 Tons	1	Job	\$ 3000.00	
	Standby Time	1	Hour	\$ 87.50	
	Minimum Load for Delivery <u>22 tons</u>				



# PRICE SHEET

Solicitation Number: P16-0061

**Materials Management  
Procurement**  
9875 N. 85th Ave., 2nd Fl.  
Peoria, Arizona 85345-6560  
Phone: (623) 773-7115  
Fax: (623) 773-7118

Contract Name: Calmat Company dba Vulcan Materials

Item	Description of material and/or services	Qty	Unit	Unit Price	Extended Price
	Off-Hour Requirements - Optional				
	Plant Opening Charge - with 24 hour notice				
	Hot Mix Asphalt - Less than 20 Tons	1	Job	\$ 1000.00	
	Hot Mix Asphalt - 20 to less than 40 Tons	1	Job	\$ 1000.00	
	Hot Mix Asphalt - 40 to less than 60 Tons	1	Job	\$ 1000.00	
	Hot Mix Asphalt - 60 to less than 80 Tons	1	Job	\$ 1000.00	
	Hot Mix Asphalt - 80 to less than 100 Tons	1	Job	\$ 1000.00	
	Hot Mix Asphalt - 100 to less than 120 Tons	1	Job	\$ 1000.00	
	Hot Mix Asphalt - 120 to less than 140 Tons	1	Job	\$ 1000.00	
	Hot Mix Asphalt - 140 to less than 160 Tons	1	Job	\$ 1000.00	
	Hot Mix Asphalt - 160 to less than 180 Tons	1	Job	\$ 1000.00	
	Hot Mix Asphalt - 180 to less than 200 Tons	1	Job	\$ 1000.00	
	Hot Mix Asphalt - Over 200 Tons	1	Job	\$ 1000.00	
	Weekend/Overtime product price differential per Ton	1	Ton	\$ no bid	
	<b>Subtotal I&amp; II:</b>				\$ 343,200.00
	<b>Tax Rate * 9.3 % Taxes:</b>				\$ 31,917.60
	<b>Grand Total:</b>				\$ 375,117.60
	City of Peoria requires delivery within twenty-four (24) hours A.R.O.				
	Bidder offers delivery within <u>24</u> hours A.R.O.				
	Does availability depend on what mix a particular plant is producing at the time? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				